

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 11 12 13 14 15 16 17 18 19 20 21 22 23 24
10 MARK OLLA,
11 Plaintiff,
12 v.
13 ROBERT H. WAGNER, et al.,
14 Defendants.

CASE NO. C14-5220 RBL

ORDER DENYING MOTION FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS

[DK. #1]

THIS MATTER is before the Court on pro se Plaintiff Olla's Motion for leave to proceed
in forma pauperis. [Dkt/ #1]

Olla's proposed complaint asserts a variety of claims against a variety of defendants. The
case involves three loans totaling \$2.1 million, made by the Wagner Defendants (Mr. and Mrs.,
and their Trust) to Olla. The loans were for the purpose of Olla's purchase of real property in
Indianola, Washington. The facts are not entirely clear, despite the complaints 80 page length,
but it appears that the loans were secured by Olla's Malibu, California home (which was for sale
for \$5.45 million) and the Indianola home. Olla apparently fell into default and ultimately
executed deeds in lieu of foreclosure on *both* properties to the Wagner Defendants.

1 Olla now seeks to rescind the loans and to recover compensatory and punitive damages
2 from the Wagners, their Washington attorney (Defendant Anderson), and a former Kitsap
3 County Judge (Defendant Hartman). He also asserts claims under the Truth In Lending Act
4 (TILA) and the HOEPA, for quiet title, fraud, breach of fiduciary duty, emotional distress, and
5 declaratory relief.

6 Olla's claims against Hartman arise from a prior litigation in Kitsap County Superior
7 Court over which Hartman presided. Olla claims that that proceeding was fraudulent and that it
8 resulted in a \$2 million judgment in Wagner's favor, against Olla. There is also reference to a
9 prior litigation among or between some of the same parties and some of the same subject matter
10 in Los Angeles.

11 Olla claims that at the time of the loans he was making \$40,000 per month, but that he is
12 now indigent, due to the Defendants' conduct.

13 A district court may permit indigent litigants to proceed *in forma pauperis* upon
14 completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad
15 discretion in resolving the application, but "the privilege of proceeding *in forma pauperis* in civil
16 actions for damages should be sparingly granted." *Weller v. Dickson*, 314 F.2d 598, 600 (9th
17 Cir. 1963), *cert. denied* 375 U.S. 845 (1963). Moreover, a court should "deny leave to proceed
18 *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the
19 action is frivolous or without merit." *Tripathi v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369
20 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis*
21 complaint is frivolous if "it ha[s] no arguable substance in law or fact." *Id.* (citing *Rizzo v.*
22 *Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir.
23 1984)).

1 At least some of the claims asserted in Plaintiff's complaint are facially frivolous: he
2 cannot sue a state court judge in this court in an effort to undo a judgment rendered there. This
3 Court cannot and does not review the actions of other trial courts; adverse rulings and judgments
4 may be appealed to the correct appellate court.

5 The existence of prior litigation and judgment(s) also raises the possibility that these
6 claims are barred by issue or claim preclusion. It is also not clear that this Court has jurisdiction
7 over the California Defendants, or that it could quiet title on Malibu California real property in
8 any event.

9 For these reasons, the Motion for Leave to Proceed IFP is DENIED without prejudice.
10 Plaintiff should file an amended proposed complaint—shorter, clearer—that addresses these
11 issues within 15 days of this ORDER, or pay the filing fee. If he does neither, this matter will be
12 DISMISSED.

13 IT IS SO ORDERED.

14 Dated this 19th day of March, 2014.

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16 Ronald B. Leighton
17 RONALD B. LEIGHTON
18 UNITED STATES DISTRICT JUDGE

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